



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 7, 2004

Mr. Richard J. McGillivray
Assistant General Counsel
Texas Workers' Compensation Commission
7551 Metro Center Drive, Suite 100, MS-4D
Austin, Texas 78744

OR2004-4610

Dear Mr. McGillivray:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 202952.

The Texas Workers' Compensation Commission (the "commission") received a request for information on six referrals pertaining to five named individuals as well as information pertaining to a specified business, two named individuals, and "TPS Joint Self Insurance Funds." You claim that some of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that you have only submitted information pertaining to the referrals. As you have not submitted the other requested information for our review, we assume you have released it to the extent that it existed on the date the commission received this request. If you have not released any such records, you must do so at this time. *See Gov't Code §§ 552.301(a), .302; see also Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).*

We next address the commission's obligations under the Act. Section 552.301(a) of the Government Code requires a governmental body that receives a written request for information that it wishes to withhold and for which there has not been a previous determination to request a ruling from this office. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of

receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the requested information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents.

You inform us that the commission received the present request on March 19, 2004. Fifteen business days following that date was April 9, 2004. You did not submit responsive information until April 12, 2004. You do not allege that the commission was closed for any of the business days between March 19 and April 9. Consequently, we find that you have failed to comply with the fifteen business-day deadline mandated by section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Because section 552.101 can provide a compelling reason for withholding information, we will consider your arguments regarding this exception.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information protected by other statutes. You contend that the records at issue consist of information in investigation files that is confidential pursuant to sections 402.092 and 414.005 of the Labor Code. Section 402.092 relates to information maintained in the investigation files of the commission. Labor Code § 402.092. Section 402.092(c) provides that information in an investigation file that is information in or derived from a claim file is governed by the confidentiality provisions of the Labor Code relating to claim file information. *Id.* § 402.092(c). We note that the submitted investigation file information includes information from a claim file; accordingly, we will address the applicability of section 402.083 of the Labor Code to this information.

Section 402.083 provides that "[i]nformation in or derived from a claim file regarding an employee is confidential and may not be disclosed by the commission except as provided by this subtitle." This office has interpreted section 402.083 to protect only that "information

in or derived from a claim file that explicitly or implicitly discloses the identities of employees who file workers' compensation claims." Open Records Decision No. 619 at 10 (1993). Prior decisions of this office have found that information revealing the date of injury, as well as an injured employee's name, beneficiary name, commission claim number, social security number, home telephone number, home address, and date of birth implicitly or explicitly identifies claimants and is therefore excepted from disclosure under section 552.101 in conjunction with section 402.083 of the Labor Code. Only in those cases where release of the employer's identity would reveal the claimant's identity may the identity of an employer be withheld. Thus, to the extent that the submitted information consists of claim file information that implicitly or explicitly identifies claimants, the commission must withhold the information under section 552.101 in conjunction with section 402.083 of the Labor Code.

We turn now to your arguments regarding the remaining submitted information. You inform us that the information at issue "is maintained by the Commission in connection with investigations pursuant to Texas Labor Code §§413.002, 413.0511, and 413.0512." Section 413.0513 of the Labor Code provides in part:

(a) Information collected, assembled, or maintained by or on behalf of the commission under Section 413.0511 or 413.0512 constitutes an investigation file for purposes of Section 402.092 and may not be disclosed under Section 413.0511 or 413.0512 except as provided by that section[.]

Labor Code § 413.0513(a). Section 402.092, which governs release of investigation files, provides in part:

(a) Information maintained in the investigation files of the commission is confidential and may not be disclosed except:

- (1) in a criminal proceeding;
- (2) in a hearing conducted by the commission;
- (3) on a judicial determination of good cause; or
- (4) to a governmental agency, political subdivision, or regulatory body if the disclosure is necessary or proper for the enforcement of the laws of this or another state or of the United States.

(b) Commission investigation files are not open records for purposes of Chapter 552, Government Code.

....

(d) For purposes of this section, "investigation file" means any information compiled or maintained by the commission with respect to a commission investigation authorized by law.

Labor Code § 402.092(a), (b), (d).

Based on your representation that the remaining information at issue is maintained in connection with investigations conducted pursuant to sections 413.0511 and 413.0512 of the Labor Code, we find that this information is subject to section 402.092 of the Labor Code. *See* Labor Code § 413.0513(a). Pursuant to section 402.092, this information is confidential and may not be released unless one of the listed exceptions applies. *Id.* § 402.092(a). You inform us that none of the exceptions found in section 402.092 applies in this instance. We therefore agree that the remaining information is confidential under section 402.092 and must be withheld pursuant to section 552.101.

In summary, to the extent the submitted information consists of claim file information that implicitly or explicitly identifies claimants, the commission must withhold such information under section 552.101 of the Government Code in conjunction with section 402.083 of the Labor Code. The remainder of the submitted information must be withheld under section 552.101 in conjunction with section 402.092 of the Labor Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one

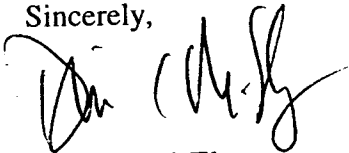
of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/krl

Ref: ID# 202952

Enc. Submitted documents

c: Ms. Cynthia Gillespie
1132 Castlewood Ct.
DeSoto, Texas 75115
(w/o enclosures)